



# LEGAL AND PRACTICAL ASPECTS IN RUNNING BOARD MEETINGS



## Legal and Practical Aspects In Running Board Meetings

### I. MINUTES

#### A. Importance of Minutes

1. Critical record in event Board or Association is sued.
2. A protective measure for Board and Association.
3. Only record of actions taken by Association and Board.

#### B. Purpose

1. Provides a record of actions taken by Board.
2. Establishes and protects authority of Board's actions.
  - a. Minutes cannot create the authority for Board's actions.
3. Can be used to rebut a presumption of authority.
4. Can protect Directors from breach of fiduciary duty and malfeasance claims.
5. Minutes are required to be kept by Colorado statute.
6. Failure to keep minutes will not render decision or act of Board invalid.

#### C. Suggestions for Better Minutes

1. Draft minutes contemporaneously; obtain approval by Board within a reasonable time after drafting.
2. Consider using a recording secretary who is not a Board member.
  - a. Frees Board members to participate.
  - b. Allows recording secretary to devote attention to taking accurate notes.
  - c. Recommendation: consider hiring outside recording secretary.
3. Should be brief and concise -- taking minutes not same as dictation.
4. Contents of Minutes
  - a. Association's name and the words "Minutes of the Meeting of (name of Association).
  - b. Date, time, place of meeting.

- c. Names of persons present in official capacity. If membership meeting, only record number of votes present.
  - d. Record names of persons dissenting if requested.
  - e. Resolutions.
    - 1. Record resolution exactly as made, seconded, and passed.
    - 2. Briefly state rational behind passing - but not summary of debate.
    - 3. Attach adopted reports to minutes.
    - 4. Best if motions required to be in writing and put on agenda before discussion.
    - 5. Major issues - formal resolutions; minor matters - simple motions.
  - 5. A Permanent Record - Don't throw away.
- D. Notice of Enforcement
  - 1. Show in minutes Board issued detailed and specific notice for hearings.
  - 2. Document manner, means, and times of enforcing the rules, etc.
- E. Executive Meetings
  - 1. Record subject matter put in issue and who voted to go into the meeting.
  - 2. Details of meeting are not recorded, nor are votes.
- F. Committee Reports
  - 1. Always put in writing and attach to minutes.
  - 2. If no report, state so in writing.

## II. AGENDA

- A. Suggested Agenda
  - 1. Call to order.
  - 2. Approval of last Meeting's minutes.
  - 3. Homeowner open forum.
  - 4. Treasurer's report.
  - 5. Management report.
  - 6. Committee reports.
  - 7. Old business.
  - 8. New business.
  - 9. Adjournment.
- B. Homeowner (Resident) Open Forum
  - 1. Place at beginning of meeting.

- a. Allows Board to think about homeowners' concerns before formally discussed.
  - b. Provides cooling-down period for homeowners and Board.
  - c. Opportunity for homeowners to comment before action is taken by the Board is required by Colorado statute.
- 2. Allows homeowners to vent complaints early.
- 3. Put all homeowners' comments on agenda under new or old business.
  - a. Homeowners' time thus will not consume major portion of meeting.
  - b. Homeowners assured comments placed on agenda to be discussed by Board and possibly assigned to committee.
- 4. Consider placing time limit on each speaker.
- C. Meetings are Usually Unproductive if they Exceed Two Hours

### III. RULES OF ORDER

- A. Roberts' Rules of Order - best guideline (see attached chart)
- B. Homeowner's Time
  - 1. Only President to conduct and respond.
  - 2. Board members remain silent.
  - 3. President should take control - once you move on, that is the end of the debate.
  - 4. Suggestion - note homeowner's comments on chalk board or easel for all to see.
    - 1. Assures residents comments will be discussed.
    - 2. Avoids repetitive commentary.

### IV. NOTICES

- A. Requirements dictated by governing documents and Colorado statutes (Bylaws).
- B. Board meetings - post notice to homeowners.
- C. Committee meetings - post notice if open meeting.
- D. Annual meeting - mail notice to homeowners.
- E. Special meeting - see Bylaws for notice requirements.
- F.

**V. REPEATED PROBLEM-MAKER**

- A. Have Board member literally sit next to problem-maker - controls and quiets the person.
- B. Discuss concerns with problem-maker before the meeting.
- C. For repeated comments on resolved issues, write letter documenting that issue decided, resolved, and no longer to be considered.

## TABLE OF PARLIAMENTARY RULES

The following table explains some of the basic rules of parliamentary procedure. In some cases, the application of the rules is more complicated than indicated here and the reader should consult "Robert's Rules of Order" or any text on parliamentary procedure to get complete rules. An asterisk indicates there is an exception to the rule stated under certain conditions and "Robert's Rules of Order" should be consulted.

<u>Motion</u>	<u>Is Needed?</u>	<u>Can Speaker be Interrupted?</u>	<u>Debatable?</u>	<u>Can It Be Amended?</u>	<u>Vote Needed to Pass</u>
Adjourn	Yes	No	No*	No	Majority
Amendment	Yes	No	Yes	Yes	Majority
Amend an Amendment	Yes	No	Yes	No	Majority
Appeal from Decision of the Chair	Yes	Yes	No(1)	No	Majority
Debate, To Limit	Yes	No	No	Yes	2/3
Motion	Yes	No	Yes	Yes	Majority
Nominations:					
To Make	No	No	No	No	No(2)
To Close	Yes	No	No	Yes(3)	2/3
Order, Question of	No	Yes	No	No	N/A
Parliamentary Inquiry	No	Yes	No	No	N/A
Privilege, Question of	No	Yes	No	No	N/A
Recess, To Take	Yes	No	Yes(4)	Yes	Majority
Reconsider	Yes	Yes	Yes(5)	No	Majority
Substitute Motion	Yes	No	Yes	Yes	Majority
Suspend Rules	Yes	No	No	No	2/3
To Lay on Table	Yes	No	No	No	Majority
To Take From Table	Yes	No	No	No	Majority

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- (1) If relating to indecorum; yes in other cases.  
 (2) No vote on nominations; just on election.  
 (3) Yes, under certain circumstances.  
 (4) Yes, if another question is before the assembly.  
 (5) Yes, unless motion to be reconsidered is undebatable.  
 \* (With certain exceptions)

## HOW TO WRITE A RESOLUTION

1. A long or complicated motion should be in writing and may be in the form of a resolution. It should be written in advance if possible.
2. A resolution may have two parts, the preamble and the resolution. There may be several preamble clauses and several resolving clauses in an elaborate resolution, or it may be as simple as a motion, using the word "Resolved" instead of the words "I move." It is not required to have a preamble.
3. Reasons for a motion's adoption should not be included in the motion itself. Members may agree with the proposed action but not your reasons for it and vote against it. And, such reasons within the body of an ordinary motion may be considered debate and then would not be in order.
4. However, the advantage of a preamble to a resolution is that it states the reason for the resolution, but it is considered separately. A preamble may be just a simple statement of background. When a resolution has a preamble, the preamble is not open to amendment until the resolving clauses have been debated and amended. The vote is then taken on the entire resolution, which includes the preamble.
5. The negative vote is not taken on a courtesy or complimentary resolution unless a member requests that the "no" vote be taken.
6. A resolution is a main motion. All rules related to the main motion apply to a resolution.
7. An elaborate resolution contains several preamble clauses and several resolving clauses. Write each clause as a separate paragraph.
8. Begin each preamble paragraph with "Whereas" followed by a comma, and the next word begins with a capital letter. The preamble, even if it contains several paragraphs, should not contain a period. Close each preamble with a semi-colon, after which a connecting phrase such as "therefore", or "therefore, be it" or "now, therefore, be it" may be used. When one of these phrases is used, no punctuation should follow it and it should be placed at the end of the preamble paragraph.
9. The word "Resolved" is underlined, printed in italics or upper case letters, is followed by a comma and the word "That" which begins with a capital T. Begin each resolving paragraph this way or number them after the first "Resolved." Close each resolving paragraph with a semi-colon, the next to last paragraph with a semi-colon, followed for the word "and", and end the last resolving paragraph with a period.

## SUGGESTED PROCEDURES AND INFORMATION FOR HOA ANNUAL MEETING

### 1. Call to Order.

- 1.1 Welcome all Unit Owners and thank them for attending.
- 1.2 Introduce yourself as President of the Association.
- 1.3 Call upon managing agent to confirm that notice of the meeting was mailed to all Unit Owners in accordance with the bylaws.

Written notice of the meeting is to be given to all Unit Owners at least ten days prior to the date of the meeting and may be delivered either personally or by mail to the Unit Owner at the address given to the Association by the Unit Owner for such purpose, or to the Unit Owner's unit, if no address for such purpose has been given to the Association.

### 1.4 Quorum -

Call upon the managing agent to advise whether a quorum is present. A quorum of Unit Owners for the meeting shall be constituted by Unit Owners represented in person or by proxy and holding a majority of the votes entitled to be cast at the meeting.

- 1.5 If a quorum of Unit Owners is represented, the meeting is duly constituted and can proceed to conduct business.
- 1.6 If a quorum of Unit Owners is not represented the only business that can legally be conducted is to adjourn, recess, or take measures to obtain a quorum. It should be noted that according to Roberts Rule of Order the absence of a quorum at a properly called meeting does not detract from the fact that the Association bylaws requiring the meeting to be held have been complied with.

Usually the only business to be conducted at the annual meeting is the election of directors. In the absence of a quorum the reports may be presented and a general discussion may be held neither of which is considered as conducting business.

### 2. Introductions

- 2.1 Introduce all Board members present.
- 2.2 Introduce managing agent.

### 3. Consideration of Minutes

Copies of the draft minutes of the last annual meeting will have been distributed to all attendees. At this time, ask for a motion to waive the reading of the minutes and approval of the minutes as distributed. After obtaining a second, ask if there are any corrections, deletions, or additions. Pause and if there is no response, ask for a vote: "All in favor Aye;" "Any opposed?"

### 4. Finance Committee Report

Call upon the Treasurer to present the Finance Committee Report. Copies of the audited financial statements for the year ended December 31, 20\_\_ will have been distributed to the Unit Owners present.



5. Management Report

Call upon the managing agent to briefly review the activities of the Association during the preceding year.

6. Nominations

6.1 Call upon the nominating committee Chairman to report.

6.2 After receiving the report by the Nominating Committee, ask for the Unit Owners present whether there are any other nominations from the floor. According to Roberts Rules of Order, no second is required for nominations from the floor, but sometimes one or more Unit Owners will second a nomination to indicate endorsement.

When it appears that no one else wishes to make a nomination, ask once again if there are any further nominations and if there is no response, declare the nominations closed without waiting for a motion to that effect. If a motion to close nominations is made, it must be seconded and requires a 2/3 vote for adoption.

7. Nominee Speeches

Ask each nominee to stand, introduce themselves and give a brief resume of themselves and why they feel they would be an asset to the Association Board of Directors.

8. Election Judges

Appoint a neutral third party or a committee of homeowners who are not candidates to act as Election Judge(s). Ask the Election Judge(s) to collect and count the ballots.

9. General Discussion

Ask the Unit Owners present whether they wish to discuss anything of interest to the Association and the Unit Owners. A limit of three minutes per person is provided for this purpose.

Consideration should be given to conducting an "informal election." Every director holds office for a term of three years and until his successor shall be elected and qualified. In other words, directors continue in office until such time as their successors are elected. As no formal election can take place in the absence of a quorum, the existing directors remain in office until their successors are elected at a duly called meeting at which a quorum is present. In the interest of equity and to give effect to the will of those Owners who have taken sufficient interest in the affairs of the Association to either attend or to submit their proxy, an informal election can be held as follows:

- a. The directors whose terms of office expire are asked to resign.
- b. The Unit Owners present in person or by proxy proceed with the "election" of directors to fill the vacancies.
- c. The Unit Owners "elected" are then appointed by the remaining Board members to fill the vacancies on the Board.

NOTE: Such "informal elections" are considered appointments by the directors to fill vacancies and are not elected. However, their rights, duties, and obligations are the same. The appointee's position would either be a three year term or would be up for election at the next annual meeting of Unit Owners at which a quorum is represented, whichever comes first.

10. Announcement of Election Results

Call upon the Election Judge(s) to provide you with a written report of the results of the election. Before announcing the result, thank the directors whose terms of office expire and then announce the result. Welcome the new directors and thank the Nominating Committee.

11. Adjournment

Thank all Unit Owners present for attending the meeting and ask if there is any further business. If there is no response, simply state "Since there is no further business, the meeting is adjourned."

Alternatively, call upon the Unit Owners present for a motion "to adjourn." The motion must be seconded and requires a majority vote.